

FILED

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1 JOSHUA S. GOODMAN, ESQ. (SBN 116576)  
2 ZACHARY S. TOLSON, ESQ. (SBN 242824) 2008 MAR 27 P 2:35  
3 JENKINS GOODMAN NEUMAN & HAMILTON LLP  
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5 San Francisco, California 94104  
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RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

E-FILING

ADR

6 Attorneys for Defendant  
7 TRICAM INDUSTRIES, INC. and  
8 HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 KEVIN GLORIA,

Plaintiff,

vs.

13 HOME DEPOT, INC., TRICAM  
14 INDUSTRIES and DOES 1-100,

Defendants.

C08 No. 01672

NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441 AND 28 U.S.C. §  
1446(b)

JURY TRIAL DEMANDED

16 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

BY FAX

17 PLEASE TAKE NOTICE that defendant TRICAM INDUSTRIES ("TRICAM"),  
18 erroneously sued herein as TRICAM INDUSTRIES, and HOME DEPOT U.S.A., INC.  
19 ("HOME DEPOT"), erroneously sued herein as HOME DEPOT, INC., by and through its  
20 counsel, hereby removes the above-captioned action from the Superior Court of the State of  
21 California, in and for the County of Santa Clara, to the United States District Court,  
22 Northern District of California, for the reasons described below:

23 1. TRICAM and HOME DEPOT, INC. are the sole named defendants in a civil  
24 action pending against it in Santa Clara Superior Court, entitled Kevin Gloria v. Home  
25 Depot, Inc., Tricam Industries, and Does 1-100, Case No. 108CV103424. Attached hereto  
26 as **Exhibit A** is a copy of the Summons and Complaint for this action.

Jenkins Goodman  
Neuman & Hamilton  
LLP  
417 Montgomery St.  
10<sup>th</sup> Floor  
San Francisco, CA  
94104  
(415) 705-0400

NOTICE OF REMOVAL OF ACTION

10743178.tif - 3/26/2008 4:52:24 PM

2. TRICAM and HOME DEPOT were both served with the Complaint on March 18, 2008. Immediately following the filing of this Notice of Removal of Action, written notice of this filing will be served on Plaintiff and will be filed with the Clerk of the Superior Court for the County of Santa Clara, in accordance with 28 U.S.C. § 1446(d).

## JURISDICTION

3. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332. This case may be removed to this Court by TRICAM and HOME DEPOT pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a case that could have been commenced in federal court based on diversity of citizenship. Both at the time that this action was commenced and at this time, Plaintiff was and is a citizen of California. Both at the time that this action was commenced and at this time, TRICAM was and is a Minnesota corporation and has its principal place of business in Minnesota. Both at the time that this action was commenced and at this time, HOME DEPOT is incorporated in Delaware and has its principal place of business in Georgia. "For purposes of removal...the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. §1441(a).

4. The Superior Court action was served on TRICAM on March 18, 2007, along with a Statement of Damages to TRICAM in the amount \$1,000,000.00, plus "unknown" damages for medical expenses, future medical expenses, loss of earnings, and loss of earning capacity, at which time it was ascertained that the amount in controversy exceeds \$75,000. A true and correct copy of said Statement of Damages to TRICAM is attached hereto as **Exhibit B**. Therefore the matter is removable pursuant to 28 U.S.C. Section 1446(b).

5. The Superior Court action was served on HOME DEPOT on March 18, 2007, along with a Statement of Damages to HOME DEPOT in the amount \$1,000,000.00, plus "unknown" damages for medical expenses, future medical expenses, loss of earnings, and loss of earning capacity, at which time it was ascertained that the amount in controversy

1 exceeds \$75,000. A true and correct copy of said Statement of Damages to HOME DEPOT  
2 is attached hereto as **Exhibit C**. Therefore the matter is removable pursuant to 28 U.S.C.  
3 Section 1446(b).

4 WHEREFORE, the undersigned requests that the action described above be removed  
5 in its entirety to this Court for all further proceedings pursuant to 28 U.S.C. § 1441, *et seq.*

6 **DEMAND FOR JURY TRIAL**

7 Defendant demands a jury trial.

8 DATED: March 24, 2008

JENKINS GOODMAN NEUMAN &  
HAMILTON LLP

9  
10 By: 

11 JOSHUA S. GOODMAN  
12 ZACHARY S. TOLSON  
13 Attorneys for Defendant  
HOME DEPOT U.S.A., INC.

14 f:\docs\jsg\gloria, kevin v. hd, tricam\pleadings\notice of removal of action.demandjury.doc  
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03-17-'08 16:32 FROM-David Allen &amp; Assoc. 916-451-5687

T-871 P004/016 F-760  
SUM-100**SUMMONS  
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**Defendant, HOME DEPOT, INC., TRICAM INDUSTRIES and  
DOES 1 - 100**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTA DEMANDANDO EL DEMANDANTE):**

Plaintiff, KEVIN GLORIA

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

JAN 17 08

JAN 17 08

KIRI TORRE  
CLERK OF COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estas formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Santa Clara County

191 North First Street

San Jose, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Matthew C. Schumacher, Esq.

DAVID ALLEN &amp; ASSOCIATES

5230 Folsom Blvd.

Sacramento, CA 95819

(916) 455-4800

DATE:

**Kiri Torre****Chief Executive Officer/Clerk**Clerk, by  
(Secretario)**J. Cao-Nguyen**Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

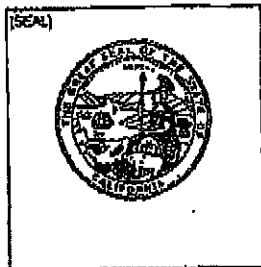
1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under:
- ☐ CCP 416.10 (corporation)
  - ☐ CCP 416.20 (defunct corporation)
  - ☐ CCP 416.40 (association or partnership)
  - ☐ other (specify):

- ☐ CCP 416.60 (minor)
- ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):



Form Adopted for Mandatory Use  
Judicial Branch of California  
SUM-100 (Rev. January 1, 2008)  
Marin County's General Form 100

**SUMMONS**

Court of Civil Procedure 55-412-20, 160

Gloria, Kevin (4579)

03-17-'08 16:36 FROM-David Allen & Assoc. 916-451-5687 T-872 P005/016 F-760

ATTORNEY OR PARTY WITHOUT ATTORNEY (Write, State Bar number, and address): Matthew C. Schumacher, Esq. DAVID ALLEN & ASSOCIATES 5230 Folsom Blvd. Sacramento, CA 95819 TELEPHONE NO.: (916) 455-4800 FAX NO. (optional): (916) 451-5687 E-MAIL ADDRESS (optional): mschumacher@davidallenlaw.com ATTORNEY FOR (Name): Plaintiff, Kevin Gloria SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: PLAINTIFF: Plaintiff, KEVIN GLORIA DEFENDANT: Defendants, HOME DEPOT, INC. and TRICAM INDUSTRIES <input checked="" type="checkbox"/> DOES 1 TO 100 COMPLAINT-Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): PRODUCT LIABILITY <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify): Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		FOR COURT USE ONLY JAN 17 08 KEN TORRE CLERK OF COURT SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA
CASE NUMBER: 108CV103424		

1. Plaintiff (name or names): Plaintiff, KEVIN GLORIA

alleges causes of action against defendant (name or names): Defendant, HOME DEPOT, INC. and TRICAM INDUSTRIES and DOES 1 - 100

2. This pleading, including attachments and exhibits, consists of the following number of pages:

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
  - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
  - (b) ☐ other (specify):
- (5) ☐ other (specify):

b. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
  - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
  - (b) ☐ other (specify):
- (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

Form Approved for Optional Use  
 Judicial Council of California  
 PLO-91-001 (Rev. January 1, 2007)

ESSENTIAL FORMS

COMPLAINT-Personal Injury, Property  
 Damage, Wrongful Death

Gloria, Kevin (4579)

Page 1 of 3  
 Code of Civil Procedure, § 425.12  
 www.courtinfo.ca.gov

03-17-'08 16:36 FROM-David Allen &amp; Assoc.

916-451-5687

T-872 P006/816 F-760

## SHORT TITLE:

Gloria v. Home Depot, Inc., et al.

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

Each defendant named above is a natural person

5.

a. ☒ except defendant (name):

HOME DEPOT, INC.

(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):c. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):b. ☒ except defendant (name):

TRICAM INDUSTRIES

(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):d. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Do defendants (specify Do numbers) 51 - 60 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Do defendants (specify Do numbers) 61 - 100 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☒ Plaintiff is required to comply with a claims statute, anda. ☒ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):



03-17-'08 16:37 FROM-David Allen & Assoc. 916-451-5687

T-872 P007/016 F-768

SHORT TITLE:

Gloria v. Home Depot, Inc., et al.

CASE NUMBER

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☒ Products Liability
- e. ☐ Premises Liability
- f. ☐ Other (specify):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☐ other damages (specify):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
- (2) ☐ in the amount of \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: January 14, 2008

Matthew C. Schumacher, Esq.  
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

FLD-P1-001 (Rev. January 1, 2007)



COMPLAINT-Personal Injury, Property  
Damage, Wrongful Death

Gloria, Kevin (4579)

Page 4 of 3

03-17-'08 16:37 FROM-David Allen & Assoc. 916-451-5687 T-872 P008/016 F-750

SHORT TITLE:

Gloria v. Home Depot, Inc., et al.

CASE NUMBER

ONE

CAUSE OF ACTION- General Negligence

Page 4

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CN-1. Plaintiff (name): Plaintiff, KEVIN GLORIA

alleges that defendant (name): Defendant, HOME DEPOT, INC. and  
TRICAM INDUSTRIES

☒ Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): SEPTEMBER 9, 2006

at (place): or around 59 Great Oaks Blvd., San Jose, CA.

(description of reasons for liability) :

Plaintiff, KEVIN GLORIA, used a ladder purchased by his employer from the Defendant, THE HOME DEPOT, INC. that was manufactured by Defendant, TRICAM INDUSTRIES. Plaintiff was working on private property located at 59 Great Oaks Blvd. in the City of San Jose County of Santa Clara while using the ladder purchased from HOME DEPOT by his employer. The ladder collapsed from under him causing him to fall to the ground. Defendants, and each of them, negligently and carelessly manufactured, sold and inspected, distributed said ladder thereby being responsible for the injuries and damages suffered by Plaintiff.

Page 1 of 1

Form Approved for Optional Use  
Judicial Council of California  
FD-41 (01/03) (Rev. January 1, 2000)



CAUSE OF ACTION- General Negligence

Code of Civil Procedure 425.12  
www.courtinfo.ca.gov

Gloria, Kevin (4579)



03-17-'08 16:37 FROM-David Allen &amp; Assoc. 916-451-5687

T-872 P009/016 F-760

SHORT TITLE:

Gloria v. Home Depot, Inc., et al.

CASE NUMBER:

TWO

(number)

## CAUSE OF ACTION- Products Liability

Page 5

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

Plaintiff (name): KEVIN GLORIA

Prod.L-1. On or about (date): 9/01/2006

plaintiff was injured by the following product:

A LADDER, PURCHASED AT THE HOME DEPOT, INC. AND MANUFACTURED BY TRICAM INDUSTRIES, MODEL NUMBER UNKNOWN.

Prod.L-2. Each of the defendants knew the product would be purchased and used without inspection for defects. The product was defective when it left the control of each defendant. The product at the time of injury was being

☒ used in the manner intended by the defendants.☐ used in a manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod.L-3. Plaintiff was a

☐ purchaser of the product.☐ bystander to the use of the product.☒ user of the product.☐ other (specify):

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod.L-4. ☒ Count One-Strict liability of the following defendants whoa. ☒ manufactured or assembled the product (names):

TRICAM INDUSTRIES

☒ Does 1 to 20b. ☒ designed and manufactured component parts supplied to the manufacturer (names):

TRICAM INDUSTRIES

☒ Does 21 to 40c. ☒ sold the product to the public (names):

TRICAM INDUSTRIES and HOME DEPOT, INC.

☒ Does 41 to 60Prod.L-5. ☒ Count Two-Negligence of the following defendants who owed a duty to plaintiff (names):

TRICAM INDUSTRIES and HOME DEPOT, INC.

☒ Does 61 to 80Prod.L-6. ☒ Count Three-Breach of warranty by the following defendants (names):

TRICAM INDUSTRIES and HOME DEPOT, INC.

☒ Does 81 to 100a. ☒ who breached an implied warrantyb. ☐ who breached an express warranty which was☐ written ☐ oralProd.L-7. ☒ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are☐ listed in Attachment-Prod.L-7 ☒ as follows:

DEFENDANTS, AND EACH OF THEM ARE RESPONSIBLE IN SOME MANNER FOR THE EVENTS AND HAPPENINGS TO AND CAUSED INJURY AND DAMAGES PROXIMATELY THEREBY TO PLAINTIFF AS ALLEGED HEREIN.

THE HOME DEPOT, INC., TRICAM INDUSTRIES, AND DOES 1 - 100

Page 1 of 1

Form Approved for Optional Use  
Judicial Council of California  
P.D. 01-091 (5) (Rev. January 1, 2007)

CAUSE OF ACTION - Products Liability

Code of Civil Procedure, § 435.12  
www.courtinfo.ca.gov

Gloria, Kevin (4579)

03-17-'08 16:38 FROM-David Allen &amp; Assoc. 916-451-5687

T-872 P013/016 F-760

CIV-050

- DO NOT FILE WITH THE COURT.  
- UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): <b>MATTHEW C. SCHUMACHER, SBN 237232</b> <b>DAVID ALLEN &amp; ASSOCIATES</b> 5230 Folsom Blvd. Sacramento, CA 95819	TELEPHONE NO.: <b>916-455-4800</b>	FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>Plaintiff, KEVIN GLORIA</b>		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: <b>191 North First Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Jose, CA 95113</b> BRANCH NAME:		
PLAINTIFF: <b>KEVIN GLORIA</b> DEFENDANT: <b>HOME DEPOT, INC., et al.</b>		
<b>STATEMENT OF DAMAGES</b> <b>(Personal Injury or Wrongful Death)</b>		CASE NUMBER: <b>108 CV 103424</b>

To (name of one defendant only): **TRICAM INDUSTRIES**Plaintiff (name of one plaintiff only): **KEVIN GLORIA**

seeks damages in the above-entitled action, as follows:

- |  | AMOUNT            |
|--|-------------------|
| 1. General damages   |                   |
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience  | \$ <u>500,000</u> |
| b. <input checked="" type="checkbox"/> Emotional distress  | \$ <u>500,000</u> |
| c. <input type="checkbox"/> Loss of consortium   | \$ _____          |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only)  | \$ _____          |
| e. <input type="checkbox"/> Other (specify)  | \$ _____          |
| f. <input type="checkbox"/> Other (specify)  | \$ _____          |
| g. <input type="checkbox"/> Continued on Attachment 1.g.   |                   |
| 2. Special damages   |                   |
| a. <input checked="" type="checkbox"/> Medical expenses (to date)  | \$ <u>UNKNOWN</u> |
| b. <input checked="" type="checkbox"/> Future medical expenses (present value)   | \$ <u>UNKNOWN</u> |
| c. <input checked="" type="checkbox"/> Loss of earnings (to date)  | \$ <u>UNKNOWN</u> |
| d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value)   | \$ <u>UNKNOWN</u> |
| e. <input type="checkbox"/> Property damage  | \$ _____          |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only)   | \$ _____          |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only)   | \$ _____          |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only)   | \$ _____          |
| i. <input type="checkbox"/> Other (specify)  | \$ _____          |
| j. <input type="checkbox"/> Other (specify)  | \$ _____          |
| k. <input type="checkbox"/> Continued on Attachment 2.k.   |                   |
| 3. <input type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify), \$ _____ when pursuing a judgment in the suit filed against you. |                   |

Date: **March 17, 2008****MATTHEW C. SCHUMACHER**

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

(Proof of service on reverse)

Page 1 of 2

Form Accepted for Mandatory Use  
Judicial Council of California  
CIV-050 (Rev. January 1, 2007)

**STATEMENT OF DAMAGES**  
**(Personal Injury or Wrongful Death)**

Code of Civ. Procedure, §§ 425.11, 425.113  
www.courtinfo.ca.gov

www.accesspln.com

03-17-'08 16:38 FROM-David Allen &amp; Assoc. 916-451-5687

T-872 P014/016 F-760

CIV-050

- DO NOT FILE WITH THE COURT.  
 -UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): MATTHEW C. SCHUMACHER, SBN 237232 DAVID ALLEN & ASSOCIATES 5230 Folsom Blvd. Sacramento, CA 95819		TELEPHONE NO.: 916-455-4800	FOR COURT USE ONLY          CASE NUMBER: 108 CV 103424
ATTORNEY FOR (Name) Plaintiff, KEVIN GLORIA			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:			
PLAINTIFF: KEVIN GLORIA DEFENDANT: HOME DEPOT, INC., et al.			
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)			

To (name of one defendant only): HOME DEPOT, INC.  
 Plaintiff (name of one plaintiff only): KEVIN GLORIA  
 seeks damages in the above-entitled action, as follows:

- |   | AMOUNT     |
|---|------------|
| 1. General damages:   |            |
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience   | \$ 500,000 |
| b. <input checked="" type="checkbox"/> Emotional distress   | \$ 500,000 |
| c. <input type="checkbox"/> Loss of consortium  | \$         |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only)                                       | \$         |
| e. <input type="checkbox"/> Other (specify)   | \$         |
| f. <input type="checkbox"/> Other (specify)   | \$         |
| g. <input type="checkbox"/> Continued on Attachment 1.g.  |            |
| 2. Special damages:   |            |
| a. <input checked="" type="checkbox"/> Medical expenses (to date)   | \$ UNKNOWN |
| b. <input checked="" type="checkbox"/> Future medical expenses (present value)  | \$ UNKNOWN |
| c. <input checked="" type="checkbox"/> Loss of earnings (to date)   | \$ UNKNOWN |
| d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value)  | \$ UNKNOWN |
| e. <input type="checkbox"/> Property damage   | \$         |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only)  | \$         |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only)                                    | \$         |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only)                          | \$         |
| i. <input type="checkbox"/> Other (specify)   | \$         |
| j. <input type="checkbox"/> Other (specify)   | \$         |
| k. <input type="checkbox"/> Continued on Attachment 2.k.  |            |
| 3. <input type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify) \$ |            |
| when pursuing a judgment in the suit filed against you.   |            |

Date: March 17, 2008

MATTHEW C. SCHUMACHER

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

Form Approved for Mandatory Use  
 Superior Court of California  
 CIV-050 (Rev. January 1, 2007)

STATEMENT OF DAMAGES  
 (Personal Injury or Wrongful Death)

Page 1 of 2  
 Code of Civil Procedure, §§ 425.11, 425.115  
 when applicable as law

www.bcceslaw.com

## CIVIL COVER SHEET

JS 44 (Rev. 12/07) (and rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

## I (a) PLAINTIFFS

KEVIN GLORIA

C08 01672 RS  
HOME DEPOT, INC., TRICAM INDUSTRIES and DOES 1-100(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

## (c) Attorney's (Firm Name, Address, and Telephone Number)

Matthew C. Schumacher, Esq., David Allen & Associates, 5230 Folsom Blvd., Sacramento, CA 95819 916.455.4800

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Joshua S. Goodman, Zachary S. Tolson, Jenkins Goodman Neuman & Hamilton LLP, 417 Montgomery Street, 10th Floor, San Francisco, CA 94104 415.705.0400

BY FAX

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Plaintiff DEF  
Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4  
Citizen of Another State ☐ 2 ☒ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 363 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13950) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 USC sections 1441 and 1446(b)

Brief description of cause:

Ladder allegedly collapsed under plaintiff

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
 DEMAND \$

CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)  
(PLACE AND "X" IN ONE BOX ONLY)☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

March 26, 2008

SIGNATURE OF ATTORNEY OF RECORD



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JS 44 Reverse (Rev. 12/07)

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1346. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.